

**AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
THE CITY AND COUNTY OF HONOLULU
UNDER THE AMERICANS WITH DISABILITIES ACT**

BACKGROUND

1. The parties to this Agreement are the United States of America and the City and County of Honolulu (City and County), including the City and County of Honolulu Department of Transportation Services (DTS), (collectively, the Parties).

2. Under Title II of the Americans with Disabilities Act (ADA), no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. 42 U.S.C. § 12132.

3. The City and County and DTS are public entities within the meaning of the ADA, and must comply with Title II of the ADA, 42 U.S.C. §§ 12131-34, and its implementing regulation at 28 C.F.R. Part 35.

4. Under the ADA, a public entity operating a public transportation system that includes a fixed route transportation system must also provide paratransit to individuals with disabilities sufficient to provide a level of service (1) which is comparable to the level of designated public transportation services provided to individuals without disabilities using such system; or (2) in the case of response time, which is comparable, to the extent practicable, to the level of designated public transportation services provided to individuals without disabilities using such system.

5. The City and County provides public transportation in Honolulu including a fixed route system, and a paratransit system. As a public entity providing public transportation

services, the City and County must comply with 42 U.S.C. §§ 12141-50 and 49 C.F.R. Parts 37 and 38, including the requirement that “... [n]o entity shall discriminate against an individual with a disability in connection with the provision of transportation service.” 49 C.F.R. § 37.5(a).

6. The United States Department of Justice (Department) is responsible for administering and enforcing Title II and its implementing regulations.

7. The Parties agree that it is in their best interests, and in the public interest, to resolve this matter on mutually agreeable terms. The Parties have therefore voluntarily entered into this Agreement.

INVESTIGATION AND DETERMINATIONS

8. Following receipt of a complaint, the Department initiated an investigation of the City and County’s paratransit service, known as “TheHandi-Van,” a public transit service for persons with disabilities who are unable to use the City and County’s fixed route bus service. TheHandi-Van is managed by, Oahu Transit Services, Inc., (OTS), a private nonprofit organization that is the City and County’s Transit Management Services Contractor pursuant to Chapter 15B, Article 8 of the Revised Ordinances of Honolulu 2021. The complaint alleged that TheHandi-Van discriminated against the Complainant and other riders on the basis of a disability in violation of the ADA because he and other paratransit eligible riders were frequently unable to reach a telephone reservation agent to schedule, check on, or cancel paratransit rides in a timely fashion because their calls were met with busy signals or long wait times.

9. The Department’s investigation substantiated that the City and County failed to provide paratransit service that is comparable to the level of designated public transportation services provided to individuals without disabilities using such system. *See* 42 U.S.C. § 12143(a); 49 C.F.R. § 37.121(a). Specifically, the Department contends that riders using

TheHandi-Van were often met with busy signals and unreasonably long hold times to make, confirm, change, or cancel reservations for rides in violation of 49 C.F.R. § 37.131(f)(3) and 49 C.F.R. § 37.131(b).

10. The City and County does not admit liability, and nothing in this Agreement shall be deemed an admission of liability with respect to any fact or issue addressed in this Agreement.

General Obligations

11. The City and County will ensure that, in connection with the provision of transportation services, no qualified individual with a disability is, by reason of such disability, excluded from participation in or denied the benefits of the City and County services, programs, or activities, or subjected to discrimination by the City and County. 42 U.S.C. § 12132. The City and County will comply with its transportation-related obligations under the ADA and the ADA's implementing regulations including by ensuring that that TheHandi-Van makes reservation services available during at least all normal business hours of OTS's administrative offices. 49 C.F.R. § 37.131(f)(3) and 49 C.F.R. § 37.131(b). The City and County will also ensure that TheHandi-Van telephone system meets the performance standards set out in paragraph 12 so that the City and County affords riders prompt access to the reservation system to make, verify, change, or cancel paratransit rides.

12. Performance Standards. No later thirty-three months after the execution date of this Agreement, the City and County shall meet the following performance standards for telephone hold times: On a monthly basis, 95 percent of individuals calling TheHandi-Van telephone lines shall experience a telephone hold time of no longer than three minutes; and 99 percent of individuals calling into TheHandi-Van telephone lines shall experience a telephone

hold time of no longer than five minutes. In addition, the City and County shall meet or exceed the following interim performance standards: i) within 12 months of the execution date of this Agreement, 91 percent of individuals calling TheHandi-Van telephone lines shall experience a telephone hold time of no longer than three minutes; and 93 percent of individuals calling into TheHandi-Van telephone lines shall experience a telephone hold time of no longer than five minutes, and ii) within 24 months of the execution of this Agreement, 92 percent of individuals calling TheHandi-Van telephone lines shall experience a telephone hold time of no longer than three minutes; and 94 percent of individuals calling into TheHandi-Van telephone lines shall experience a telephone hold time of no longer than five minutes.

13. If, during any month, TheHandi-Van experiences operational problems attributable to causes beyond the control of OTS, (including but not limited to conditions that were not anticipated or capable of being anticipated), it may report such information to the United States to consider whether it should not be a basis for determining that a pattern or practice of non-compliance exists. See 49 C.F.R. § 37.131(f)(3).

14. Data Maintenance and Reporting Requirements

- a. Paratransit Telephone Access. The City and County will continue to maintain the following data, by month: (1) the length of each telephone hold time for each request for reservations by ADA paratransit eligible persons; (2) each telephone call to TheHandi-Van reservation line that exceeds the performance standards for length of hold time set out in paragraph 12; and (3) the originating phone number and/or name of each ADA paratransit eligible person who was subjected to hold times of more than 3 minutes.

- b. Complaints. For each complaint made to the City and County and/or DTS by an ADA paratransit eligible person with respect to TheHandi-Van reservation system, the City and County will maintain the following information: (1) the name of the complainant; (2) the date of the incident (3) a fact summary of the incident, and (4) the City and County's response to the complaint.
- c. Within ninety days of the effective date of this Agreement, the City and County will submit by email the data and records identified in this paragraph in an electronic format, to the United States. Thereafter, for the term of this Agreement, the City and County will provide the records identified in this paragraph covering a two-month period, which will be provided to the United States by the 15th of the month following the two-months.

OTHER PROVISIONS

- 15. Effective Date. The effective date of this Agreement is the date of the last signature below.
- 16. Term. The duration of this Agreement will be three (3) years from the Effective Date.
- 17. Delivery of Information to the Department. All reports and materials required pursuant to this Agreement to be delivered to the Department shall be delivered, via electronic mail, to the undersigned Department counsel or to other persons subsequently specified by the Department.
- 18. Non-Waiver. Failure by the United States to enforce any provision or deadline of this Agreement shall not be construed as a waiver of its right to enforce any provision or deadline of the Agreement.

19. Timelines. Any timelines for performance fixed by, or pursuant to, this Agreement may be extended by mutual written agreement of the Parties.

20. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement. Electronic signatures are acceptable.

21. Severability. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect.

22. Binding Nature of Agreement. This Agreement shall be binding upon the parties (as well as the agents and employees of the City and County).

23. Authority. The signatory for the City and County and for the United States represents that they have the authority to bind the respective parties identified below to the terms of this Agreement.

24. Entire Agreement. This Agreement constitutes the entire agreement between the Parties on the matters raised herein and no other statement or promise written or oral, made by any party or agents of any party, that is not contained in this written Agreement, including its attachments, shall be enforceable.

25. Consideration. In consideration of the terms of this Agreement as set forth above, the United States agrees to refrain from filing a civil suit under Title II relating to TheHandi-Van reservation system, except as provided in this Paragraphs 27 and 28.

26. Review and Enforcement. The United States may review or monitor the City and County's compliance with this Agreement or the ADA at any time. The City and County will provide any information and/or documents that the United States requests to evaluate their

compliance with this Agreement by no later than fourteen (14) days of the United States' request. If the United States believes that the Agreement or any requirement thereof has been breached, the United States may institute a civil action in an appropriate Federal District Court to enforce this Agreement or the ADA.

27. Other Violations. This Agreement does not affect the City and County's continuing responsibility to comply with all aspects of the ADA. This Agreement shall have no impact upon the rights or claims of any individual not identified in this Agreement who has made, or may make, claims against the City and County for issues discussed herein. This Agreement is not intended to remedy any potential violations of the ADA or any other law, other than those specifically addressed by this Agreement. Nothing in this Agreement shall preclude the United States from filing a separate action under the ADA for any alleged violation not covered by this Agreement.

By their signatures below, the Parties respectfully consent to the execution of all aspects of this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

FOR THE UNITED STATES OF AMERICA:

REBECCA B. BOND
Chief

s/Alyse Bass

ALYSE BASS
KEVIN J. KIJEWski
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1/24/23

Date

FOR THE CITY and COUNTY OF HONOLULU

s/Rick Blangiardi
Rick Blangiardi, Mayor

1-12-23

Date

RECOMMEND APPROVAL:

s/J. Roger Morton
J. Roger Morton, Director
Department of Transportation Services

1-11-23

Date

APPROVED AS TO FORM AND
LEGALITY:

s/Kathleen A. Kelly
Deputy Corporation Counsel

1-11-23

Date